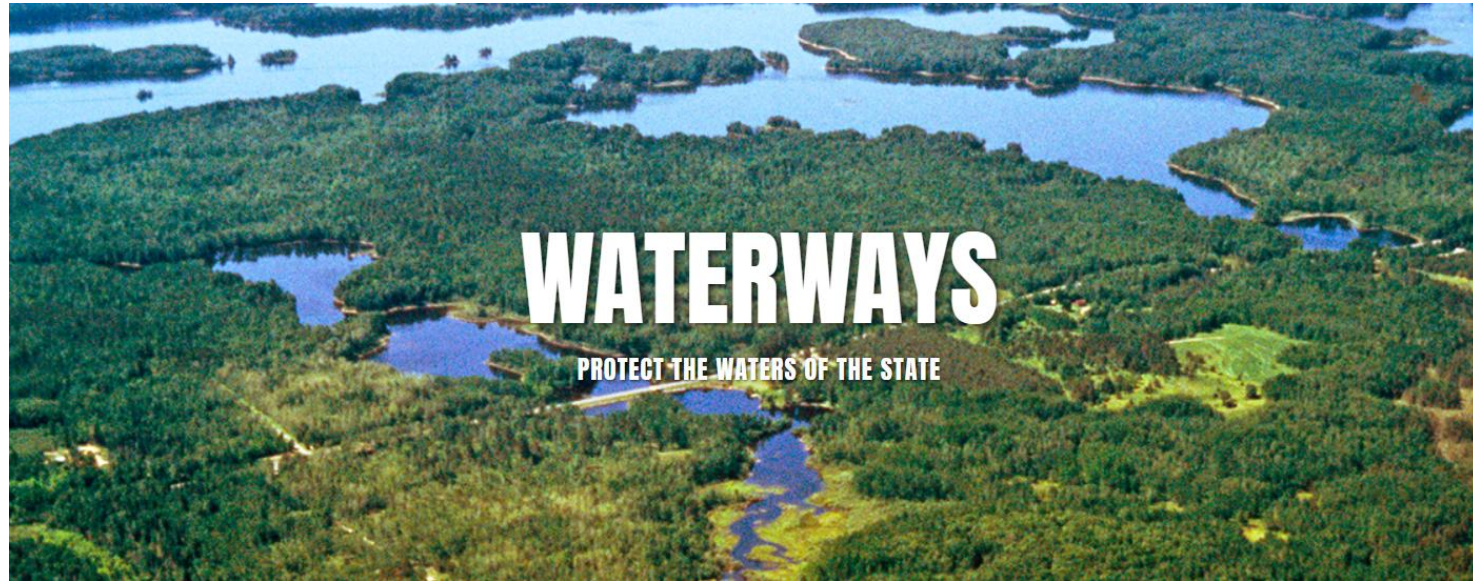




# Waterway & Wetland Regulations in Wisconsin

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# What we'll cover today

High-level overview of Wisconsin's waterway/wetland permitting program in the framework of past GLRI-funded project examples.

1. A glimpse into WI's waterway and wetland permitting program
2. Brief introduction of some past GLRI-funded projects (9x) in Wisconsin
3. Fitting the pieces together: GLRI projects and state permits

# Wisconsin's Waterway/Wetland Program

- Shared vision: water quality improvement using innovative and unique solutions.
- Regulatory programs are inherently built with a rather rigid framework of standards and procedural expectations. Clearly articulated and defined regulatory standards make for consistent implementation of a permitting program. But is there room for flexibility?
- Tiered permit program (exemptions, general permits, individual permits)
- The program is well into the workload-intensive task of shifting general permit authorities from Administrative Rules to Statewide General Permits as stand-alone regulatory documents.

# Public Trust Doctrine

- The Public Trust Doctrine embodies hundreds of years of historical values for the protection of **rights** (public and private) to hunt and fish, navigate, and recreate in public waters as well as to protect fish and wildlife habitat, water quality/quantity, and natural scenic beauty.
- The state's Ch 30 permit process reviews and authorizes activities in/around navigable (public) waterways. Projects that **do not** create a significant adverse environmental and public trust impact are authorized with an exemption or permit.

*“...and the River Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highway and forever free, as well to the inhabitants of the State as to the citizens of the United States, without any tax, impost, duty therefore.”*

~Wisconsin Constitution Article IX, Section 1 (adopted with Statehood in 1848)

# Overview of Permitting Steps

- Step #1: verify the activity or project falls under state authority
  - Watercourses (for determining Ch 31/dams jurisdiction)
  - Navigability (for determining Ch 30/navigable waterways jurisdiction)
  - Wetland identification (for determining s. 281.36/wetland jurisdiction)
- Exemptions – very low impact risk (no permit required)
  - Activities are jurisdictional but do not require a permit “in your hand” if eligible
  - Specified list of exemption eligibility requirements to be met for a project to move forward without obtaining a permit
- General Permits (GP) – minor resource impacts
  - 30-day permit review process
  - Specified list of GP-eligibility standards must be met to qualify for GP coverage/issuance.
  - Eligibility standards = permit conditions
- Individual Permits (IP) – larger or widespread impacts anticipated
  - 3–4-month permit review process (includes a required 30-day public comment period and potential for public information hearing)
  - Regulatory staff develop a permit decision document with conditions relevant and individualized for the project’s proposed impacts at the specific proposed site.

# Considering Wetlands for a Holistic View

- Often a waterway project on a stream channel or lakeshore environment may also impact state-jurisdictional wetlands. Wetland regulations are a separate state authority (s. 281.36) from waterway regulations (Ch 30).
- Resource-improvement projects (also referred to as projects creating an environmental or resource “lift”) are still required to comply with waterway and wetland regulations.
- Temporary disturbances in wetlands are very different than permanent fill in wetlands. In other words, we assess the outcome:
  - Wetlands now → wetlands after construction, or....
  - Wetlands now → uplands after construction
- ***Avoid and minimize*** are critical elements in a design that proposes to convert wetlands to uplands after a project is constructed.

# Permit Decisions

- The permit review and decision-making process involves balancing the environmental impacts of the private-interest project with the public interest of the resource.
  - An application that clearly describes and highlights the current conditions and proposed final (improved) conditions is likely to have a streamlined review process.
  - Projects that create a public resource improvement with minimize long-term adverse impacts are setting the stage for a smooth review and permitting process!
- No permit is granted if the proposal is found to be contrary to the public interest (described within the Public Trust Doctrine).

**A glimpse of recent GLRI (*Great Lakes Restoration Initiative*) grant funded projects in WI...**

- A. Turning Fields to Filters: A Waushara County Water Quality Project (2025)
- ❖ Transitions 83 acres of active agricultural land into permanent conservation to reduce nutrient runoff.
- B. 1,000 Islands Fox River Ravine Restoration Project – Garner’s Creek (2025)
- ❖ Addresses severe erosion at “edge of field” using ravine and streambank stabilization with a new technique - the Step Pool Stormwater Conveyance (SPSC) system; a treatment train approach that mimics natural hydrology and restores ecological function while treating stormwater.
- C. Shoreline Restoration in Silver Creek (2025)
- ❖ Restore 3,333 LF of eroding stream banks and riparian buffer within the lower reach of Silver Creek and Lake Michigan estuary to reduce nutrients and solids entering the waterways and restore in-stream aquatic habitat. Channel realignment, bank stabilization, riffle-pool sequences, offline habitat features, and restored floodplain will absorb stormwater and increase flood storage capacity.
- D. A Community Approach for a Sustainable Future (2024)
- ❖ Install *Agriculture Runoff Treatment Systems* (ARTS) to reduce nutrient and sediment runoff. Minimizes downstream erosion & build climate resiliency on agricultural land.
- E. The Restoration of Pigeon Creek, Where Wildlife & Humans Flourish Together (2024)
- ❖ Improve 2,120 LF of stream, stabilize 2,000 LF of bank, restore 1 ac of floodplain hydrology, and improve 1.5 acres of critical wetland habitat to reduce nutrient and sediment loads, improve water quality, and provide critical spawning/nursery habitat.

## F. County Road Z and G Stream Restoration – Plum Creek (2023)

- ❖ **Stabilize** 1,810 LF of stream, **floodplain-reconnection**, and **2 ac** of riparian corridor restoration. The completed project is estimated to reduce sediment loading by 22.2 tons/yr and phosphorus by 36.5 pounds/yr.

## G. Neumiller Woods Wetland Improvements Phase 2 (2023)

- ❖ Construct additional 0.61-acre **wetland scrape** to maximize the pollutant processing abilities of the native landscape and reduce untreated stormwater runoff volumes entering the waterway from the adjacent agricultural fields and restore historic hydrology. Estimated to reduce sediment loading by 60 tons/yr, phosphorus by 83 pounds/yr, and nitrogen by 217 pounds/yr.

## H. Targeted Phosphorus and Sediment Reduction to North Fish Creek and Chequamegon Bay, Lake Superior (2023)

- ❖ **Stabilize** severely eroding bluff to reduce ~2,385 pounds of phosphorus and 2,800 tons of sediment annually from entering the creek and Lake Superior. The project will also restore and protect approximately 516 LF of the riparian corridor.

## I. Forget Me Not Creek Stream Restoration Project (2022)

- ❖ **Realign and restore** 2,370 LF of ditched, incised stream to improve soil stability, reduce nutrient and sediment inputs to surface and groundwater, reduce flooding, restore 12 acres of **wetlands** and 5 acres of buffer, and increase habitat. Estimated to reduce sediment loading by 249.4 tons/yr, phosphorus by 279.8 pounds/yr, nitrogen by 339.2 pounds/yr, and capture 671,000 gallons of stormwater per year.

# **Fitting the pieces together: GLRI projects and state permits**

# The Past

- Past GLRI-funded projects have been authorized by a mix and multiples of GP's and IP's.
  - Common permit activity types may include stream realignment, bank stabilization, habitat structures, wetland conservation activity, ponds/scrapes, dredging, etc.
  - GP's historically were Rule-based and each regulated activity type required its own GP (so projects may have required multiple GP's).
- Waterways Program is nearing the end of transitioning from rule-based to statewide-based General Permits.
  - Development of Statewide GP's presents a unique opportunity to creatively design and develop “themed” permits to support a streamlined process.
  - Moving General Permit authority from Administrative Rule (called “Rule-based GP”) into a stand-alone legal permit document (called “Statewide GP”).
  - Why the transition?

# The Present

- Current GP options now include more diverse statewide GP's themed for project types! Often a statewide GP may include both waterway and wetland authorizations to reduce the number of permits a project requires.
  - Projects are required to comply with all eligibility standards to receive a GP. Projects that are not able or do not meet all GP standards have the option to modify (if able) to meet the eligibility for a GP or the project must proceed through the IP process.
- Examples of “themed” statewide GP's:
  - GP6 for fish/wildlife habitat structures
  - GP15 for stream restoration by govt agencies
  - GP18 for WQ Conservation Practices
  - GP22 for Hydrologic Restoration
  - GP24 for wetland conservation projects

# The Future

- Statewide GP's are required to be assessed for renewal every 5 years but can be updated and renewed before the 5-yr expiration if significant changes are identified.
- The program has the ability to consider modifying existing statewide GP's or development of new statewide GP's if there are gaps in coverage or significant struggles with successful permitting.
  - On the horizon: permit options intentionally designed and developed for streamlining permit process for resource improvement projects.
- Projects may only require a single GP (to cover multiple regulated activities) now and continuing in the future.
- An Individual Permit (IP) requirement is only for a single-activity type, so multiple IP's may be necessary depending on the design and project.
  - **Reminder:** An IP process does not mean a project cannot obtain a permit. There are going to be scenarios where project designs might be testing new designs, breaking the mold, and are quite untraditional....and the IP process may be the most reasonable process to embrace early innovative designs.

# CONNECT WITH US

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